

RFP #05-07 STATEMENT OF WORK

Research assistance to the Election Assistance Commission (EAC) for best practices on vote count and recount procedures

1.0 Background. Sec. 241 (b)(13) of HAVA allows the Commission to study the laws and procedures used by each State that govern: recounts of ballots cast in elections for Federal office; contests of determinations regarding whether votes are counted in such elections; and standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office. EAC staff reviewed the State Plans to identify the definitions provided in them regarding what constitutes a vote, and they also collected States' recount procedures found within the States' election statutes. A chart in Excel format and a Word document are provided along with this document for the Contractor to use as a baseline.

The chart and attached documents are preliminary collections of information. It is the EAC's attempt to gather information on each State, but the information may not be complete. The documents are works in progress. The chart and documents are attached to help Offeror's understand the quality and depth of information on State laws and regulations dealing with vote count and recounts. The charts and documents should help the Offeror gauge what information is available and what information will need to be gathered to research the questions listed in tasks 5.2 and 5.3.

The attached documents will assist in the development of best practices that are used by States with respect to the recounts and contests described earlier, and whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office. The Contractor shall look beyond the bare language of the statutes and procedures to further the Commission's understanding of state recount statutes and procedures as they operate in the politically driven process of an actual recount.

2.0 Objective. The objective of this contract is for the EAC to obtain assistance with the collection, analysis, and interpretation of information regarding vote count and recount procedures for the purpose of developing best practices on these topics in time for implementation for the 2006 Federal elections. As required by HAVA §241(c), the Commission shall submit to the United States President and to the Committee on House Administration of the United States House of Representatives and the Committee on Rules and Administration of the United States Senate a report on the study conducted together with such recommendations for administrative and legislative action as the Commission determines are appropriate.

3.0 Scope. In general, the Contractor shall be responsible for all research and analysis activities in drafting best practices on vote count and recount practices.

The EAC will provide the contractor with a chart of pre-identified state recount statutes, pre-identified state definitions of what constitutes a vote. EAC will review and convene

a meeting or teleconference of the EAC Standards and Advisory Boards for the discussion of the best practices document. Comments received from the public will be provided to the Contractor for analysis and incorporation into the final best practices documents, as appropriate.

4.0 Specific Tasks.

4.1 General.

- 4.1.1** Update the project work plan. The Contractor shall update and deliver the Project Plan no later than ten (10) days after the contract is awarded. The plan shall describe how the Contractor will accomplish each of the project tasks. The plan shall include a timeline indicating major milestones, and the staff responsible for each task. The updated Project Plan shall be formally briefed to the EAC Project Manager and other staff assigned to the project.
- 4.1.2** Submit monthly progress reports. The Contractor shall submit a monthly progress report within two (2) weeks of the end of each month. This report shall provide a brief summary of the activities performed and it will indicate progress against the timeline provided in the Project Plan. Any issues that could adversely affect the schedule or costs should be identified for resolution. Budget status shall also be provided.
- 4.1.3** Conduct periodic briefings for the EAC. The Contractor shall periodically meet with the EAC Project Manager to discuss research findings and work progress. The Project Plan should make allowance for this activity. The number and frequency of briefings will be determined by the Contractor's Project Manager and the EAC Project Manager as the work progresses. The Contractor may also be required to periodically brief the full Commission on their work.

4.2 Vote Count. Within 90 days of contract award the Contractor will review and analyze data collected by EAC staff on definitions of what constitutes a vote for each State by voting system. Incorporate missing information into the data already collected. For each State obtain an explanation of the State's definition of what constitutes a vote and what will be counted as a vote for each type of voting system used in the State. Types of voting systems include e.g., paper ballots, optical scan, DREs, and DREs with Voter Verified Paper Audit Trail capacity. If they do not currently have a definition list their strategy to meet the HAVA §301(a)(6) requirement.

The analysis shall include, but not be limited to, the following:

- Are vote counting methods and definitions uniform and consistent among the States for each type of voting system used; provide an analysis of the similarities and differences;
- Are definitions of what constitutes a vote uniformly applied within a State's jurisdictions;

- Who is responsible for the initial canvass of votes, the final canvass of votes, and when are votes officially certified;
- What procedures/processes exist within the States to educate train the individuals responsible for the canvassing of votes;
- How are definitions of what constitutes a vote applied to provisional and absentee ballots;
- What standards and procedures are currently in place for ballots with “straight party” options where voters make markings in both the straight party box and in individual candidate boxes;
- What standards and procedures are currently in place for counting write-in votes;
 - What constitutes a valid write-in vote;
- What constitutes a valid correction to an error;
- What markings are acceptable to evidence a vote;
 - Under what circumstances is a vote for a candidate invalidated;
 - Under what circumstances is an entire ballot invalidated;
 - How many States invalidate a vote for a candidate due to use of improper markings by the voter in spite of being able to clearly discern the voter’s intent;
- How do voting technologies impact a State’s definitions of what constitutes a vote and how votes are counted;
- What type of accounting/auditing procedures are in place to insure an accurate accounting of each ballot cast (at polling place, at early voting site, and cast by absentee) prior to the certification of official results by a local election office;
- What are the explanations and reasons cited for changes to the vote count from the unofficial count released on election night to the final certification of results, normally released weeks after an election;
- Does a longer time period between election night and final certification of results allow for more a more accurate accounting of ballots;
- What happens to voted ballots that are received by the local election authority after the certification of final results;
 - How are they handled and accounted for;
 - Can they be counted during a recount procedure;
- Are candidate, political party representatives and/or other members of the public allowed to be present to observe procedures during the period after an election and up to the period of certification of final results;
- What procedures are in place to allow for bipartisan administration/control/review/observation over ballot count procedures?
- Are all documents used to account for ballots and/or to audit an election considered public records and available for public inspection after an election;
- Have state courts ever enjoined systematic attempts to challenge voters in identifiable socio-economic areas;
- Review and list court cases that cite the current definitions of what constitutes a vote. Provide a brief summary of each case.

- 4.2.1** Draft comprehensive report that includes the data analysis and the State-by-State summary of definitions of what constitutes a vote for each voting system. The report shall also have an Executive Summary, Key Findings Section, and Recommendations for Future Research.
- Submit the draft report to the EAC Project Manager for feedback.
 - Incorporate feedback into the final draft of the report and submit to the EAC Project Manager for approval.
- 4.2.2** Review literature for methodologies used to establish best practices, and develop definitions of what shall constitute a best practice with respect to vote counts. Utilizing the methodology and definitions developed; identify best practices that are used by States with respect to standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office.
- Prepare a best practices document and submit to EAC for feedback.
 - Based on the feedback received from the Commission, the Contractor shall prepare a draft best practices document for review and comment by the EAC Board of Advisors and Standards Board.
 - Within 30 days after the EAC has given feedback on the draft document;
 - EAC will convene a meeting or teleconference of the EAC Boards for the discussion of this document. The Contractor shall provide the document at least seven days in advance of the meeting or teleconference and participate in the meeting to answer questions and record comments.
 - The Contractor shall solicit public comments on the best practices from election officials and the public in general.
 - The Contractor shall revise the document as appropriate to reflect the comments of the EAC, and the Board of Advisors and the Standards Board.
- 4.2.3** Within 30 days after EAC feedback on draft document the Contractor shall:
- Prepare final best practices document for EAC adoption.
 - Deliver the best practices document to the EAC in HTML format so it can be posted on the EAC website.

4.3 Vote Recount. Within 90 days of contract award the Contractor will review and analyze States' recount procedures collected by EAC staff.

The analysis shall include, but will not be limited to the following:

- Type of recount provided by State law: automatic (regardless of margin of victory), candidate initiated, voter initiated, or close election (takes place if the margin of victory falls beneath a prescribed numerical threshold);
- Grounds for contest; persons authorized to contest;
- Application process for requesting a recount;
- Procedures for conducting a recount (detail how votes in such an election are counted in each voting system used);
 - Are the procedure uniformly applied within the State;
 - Are recounts by hand or machine;
 - Under what circumstances would each be conducted;
- Direct Recording Equipment recounts, do the officials print out the ballots or use the electronic audit record;
 - If a State uses Voter Verified Paper Audit Trail is the audit trail document or electronic ballot counted in a recount;
- What are the standards for determining whether a vote is counted in a recount;
- What is the time frame for the recount;
- Procedures for stopping a recount;
- Charges for recount; funding source for conducting a recount;
- Actions by board of election upon discrepancy between initial canvass of votes and results of the recount of ballots;
- How is the recount conducted or structured;
 - Who is the responsible election authority for determination of these issues;
- Does the relevant law make provisions for proportionate reduction of votes if some votes were cast by ineligible voters whose identities cannot be determined;
 - If not, what remedy, if any, is applied;
- Is it possible to manipulate the scope of the recount to achieve a wider or narrower range of recounted votes;
- May a partisan political candidate challenge the laws governing recounts concurrently with a recount request, and if so, what procedures are followed;
- How might a recount transition into a challenge to the election overall;
 - Are there “windows of opportunity” for those inclined to tamper with the vote during the recount process to do so;
 - Identify security measures against vote tampering in recount statutes and procedures;
- In general, is it possible to characterize the state’s recount process as designed to produce electoral accuracy or designed to speed the compilation of final results;
- What is the typical explanation and reasons cited for changes to the vote count from the official final count to the results of the recount(s);
- Often, the vote count changes from the official count during the recount because election office staff fails to account for ballots/documents in their possession, how can this be avoided;
- Are candidate, political party representatives and/or other members of the public allowed to be present to observe procedures during the recount;

- What kind of procedures are in place to allow for bipartisan administration/control/review/observation over ballot recount procedures;
- What role do the Courts play in a recount;
- Does the definition of a vote change from count to a recount;
- Include an analysis of how best to structure recount statutes and procedures in order to counter manipulation of recounts to produce a desired result;
- Identify whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office.

4.3.1 Draft comprehensive report that includes the data analysis and the State-by-State summary of recount and contest procedures. The report shall also have an Executive Summary, Key Findings Section, and Recommendations for Future Research.

- Submit the draft report to the EAC Project Manager for feedback.
- Incorporate feedback into the final draft of the report and submit to the EAC Project Manager for approval.
- Include in the report recommendations for alternative approaches for future implementation of procedures for recounting ballots and contests of determinations. The Contractor shall conduct a literature review to identify other research results and data available on this topic. Based on the analysis of available research and the results of Task 4.3, the Contractor shall diagnose the problems and challenges of recounts of ballots and contest determination procedures and hypothesize alternative approaches.

4.3.2 Develop definitions of what shall constitute a best practice with respect to recounts and contests of determinations.

- Utilizing the methodology and definitions developed, identify best practices that are used by States with respect to the recounts and contests described in clause (i) of Section 241b (13)(A) of HAVA.
- Prepare preliminary best practices document and submit to the Commission for review and comment. Based on the feedback received from the Commission, the Contractor shall prepare a draft best practices document for review and comment by the EAC Board of Advisors and Standards Board; and the public.
- Within 30 days after the EAC has given feedback on the draft document;
 - EAC will convene a meeting or teleconference of the EAC Boards for the discussion of this document. The Contractor shall provide the document at least seven days in advance of the meeting or teleconference and participate in the meeting to answer questions and record comments.
 - The Contractor shall solicit public comments on the best practices from election officials and the public in general.

- The Contractor shall revise the document as appropriate to reflect the comments of the EAC, and the Board of Advisors and the Standards Board.

4.3.3 Within 30 days after EAC feedback on draft document the Contractor shall:

- Prepare final best practices document for EAC adoption.
- Deliver the best practices document to the EAC in HTML format so it can be posted on the EAC website.

5.0 Contract Type. The contract type will be a time and materials contract.

6.0 Place of Performance. The principal place of performance will be the Contractor's place of business. Meetings and occasional work efforts may also be conducted at the EAC offices. Some travel may be required for public hearings and Board meetings.

7.0 Period of Performance. The period of performance is from date of award until September 30, 2006.

8.0 Schedule of Deliverables.

8.1 Unless otherwise indicated, all documents must be submitted electronically in Word format and in hard copy by the Contractor Deadline indicated in Section 8.0, "Schedule for Deliverables" to the EAC Project Manager.

Task	Contractor Deadline
Project Plan (4.1.1)	10 Days after date of award.
Progress Reports (4.1.2)	Within 2 Weeks of the last day of every month during the contracting period.
Briefings (4.1.3)	TBD
Vote Count - Best Practices Methodology research, design, identification, and draft document (4.2.1)	Within 30 days after vote count data review and analysis task (4.2) is fully completed (including submission and approval of analysis report)
Vote Count – 2 nd Best Practices Draft Document (4.2.2)	Within 15 days after meeting with the EAC Boards (4.2.3)
Vote Count – Final Best Practices Document for EAC adoption (4.2.3)	30 days after EAC review of draft document

Vote Recount - Best Practices Methodology research, design, identification, and draft document (4.3.1)	Within 30 days after vote recount data review and analysis task (4.3) is fully completed (including submission and approval of analysis report)
Vote Recount - 2 nd Best Practices Draft Document (4.3.2)	Within 15 days after meeting with the EAC Boards (4.3.3)
Vote Recount - Final Best Practices Document for EAC adoption (4.3.3)	30 days after EAC review of draft document

9.0 Inspection and Acceptance Criteria. Final inspection and acceptance of all work performed, reports, and other deliverables will be performed at the offices of the EAC.

10.0 Invoicing. Invoices may be submitted monthly using Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal. Invoices shall be delivered to the attention of:

Ms. Diana Scott
Administrative Officer
U.S. Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington D.C. 20005.

11.0 Accounting and Appropriation Data. Funding is available for this contract.

12.0 Contract Terms. The contract clauses included in this document are the provisions governing this contract. The “Purchase Order Terms and Conditions” on the back of GSA Form 300 do not apply. This form is used only for the purpose of processing contract financial data.

13.0 General Provisions.

1. *Proposal Incorporated.* The Contractor’s proposal is incorporated by reference into the Statement of Work.

2. *Inspection / Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The EAC reserves the right to inspect and review any services that have been tendered for acceptance. The EAC may require correction or re-performance of nonconforming services at no increase in contract price. The EAC must exercise its post-acceptance rights within ten (10) days after the defect was discovered or should have been discovered.

3. *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement signed by authorized representatives of both parties.

4. *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). The Contractor shall proceed diligently with performance of services, pending final resolution of any dispute arising under the contract.

5. *Excusable Delays.* The Contractor shall be liable for defaults unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as acts of God or the public enemy, acts of Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the EAC, in writing, as soon as possible after the beginning of an excusable delay. The Contractor shall explain the basis for the excusable delay, and correct the problem as soon as possible. The Contractor shall notify the EAC, in writing, at the end of the delay.

6. *Other Compliances.* The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this contract.

7. *Compliance with Laws Unique to Government Contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409, relating to whistle blower protections, 49 U.S.C. 40118, and 41 U.S.C. 423 relating to procurement integrity.

8. *Limitation of Government Liability.* In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding the total amount of the contract amount. The Contractor is required to notify the Contracting Officer's Representative in writing when 75% of contract funding has been committed.

9. *Termination for Convenience.* The EAC, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulations in effect on the date of this contract.